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IN THE SEVENTH DISTRICT COURT

IN AND FOR EMERY COUNTY, STATE OF UTAH

CO-OP MINING COMPANY,

Petitioner/Appellant: PETITION FOR REVIEW

vs.

DIVISION OF OIL, GAS AND
MINING,

CASE NO. 4534

Respondent.

COMES NOW the petitioner, by and through its attorney, Kenneth L. Rothey, and hereby petitions this court as follows:

1. This court has jurisdiction over the petitioner and the respondent by virtue of the provisions of Utah Code Annotated §40-10-22(f).

2. Venue lies in this District Court for the reason that Co-Op Mining Company's Bear Canyon Mine is situated in Emery County.

3. On or about the 31st day of July, 1984, respondent through its review board entered an order suspending the operations of petitioner's Bear Canyon Mine. A copy of said order and the Findings of Fact and Conclusions of Law pertaining thereto are attached hereto and incorporated herein.

4. Said order is in violation of the provisions of Utah Code Annotated §40-8-16(2)(a), (b), and (c).

5. This court has appellate jurisdiction to review said order by virtue of the provisions of Article VIII, Section 7 of the Utah Constitution, and to affirm, reverse, or modify said order consistent with the provisions of the applicable statutes of the State of Utah as more particularly set forth in the Utah Rules of Civil Procedure, Rule 62(g).

6. Petitioner's Bear Canyon Mine is presently operating under a valid and existing interim permit granted to it by the Division of Oil, Gas and Mining on or about the 18th day of June, 1980.

7. Petitioner's mine is not in violation of any of the provisions or conditions of said interim permit.

8. The suspension of petitioner's mining operation will cause the petitioner to suffer irreparable injury in the following particulars:

a. Suspension of a standard room and pillar mining operation for indefinite periods of time, substantially increased risks to life and property and substantially increased risk of serious bodily injury to petitioner's employees in the maintenance of the status quo.

b. Suspension would result in the termination of all of petitioner's employees (in excess of 30) which would have an immediate, material, and irreparable impact upon the economic viability of petitioner's operation exposing

petitioner to the loss of use of the talents and abilities of said employees.

c. An indefinite suspension of petitioner's operation would result in an irrevocable loss of some or all of petitioner's customers since petitioner would no longer be able to supply its customers with petitioner's products.

9. Unless the order of the board of the Division of Oil, Gas and Mining is immediately suspended during the pendency of an appeal as provided in accordance with the statutes of the State of Utah and the Rules of Civil Procedure, irreparable injury will result to the petitioner.

WHEREFORE petitioner prays as follows:

1. For an order of this court suspending the order of the board of the Division of Oil, Gas and Mining of the Department of Natural Resources of the State of Utah during the pendency of this review.

2. For an order of this court directing the secretary of the Division of Oil, Gas and Mining to compile a transcript of the proceedings before the board in connection with said order, and to transmit the same along with all exhibits, petitions, responses and other pleadings in this matter to this court within the time specified in the Utah Rules of Civil Procedure as they relate to appeals to the Supreme Court.

3. For an order of this court establishing a hearing for the purpose of designating dates and times certain when petitioner should file its brief in connection

with this appeal, and when respondent should file its response in connection with this appeal.

4. For such other relief as this appellate court may deem just and equitable in the premises.

DATED this 31 day of July, 1984.



Kenneth L. Rothey
Attorney for Petitioner

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

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DIVISION OF OIL, GAS AND MINING, :
PETITIONER

ORDER

VS.

: DOCKET NO. 84-040
: CAUSE NO. ACT/015/025

CO-OP MINING COMPANY, RESPONDENT

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This matter came before the Board on July 26 and 27, 1984 in the Auditorium of the Department of Natural Resources, 1636 West North Temple, Salt Lake City, Utah.

The following Board members were present and participated at the hearing:

Gregory P. Williams, Chairman
John M. Garr
Charles R. Henderson
Richard B. Larson
Constance K. Lundberg

Petitioner, Division of Oil, Gas and Mining, was represented by Barbara W. Roberts, Esq., Assistant Attorney General. Respondent, Co-op Mining Company was represented by Kenneth Rothery and Carl Kingston.

Hearings were held, testimony and other evidence presented, the Division files in this matter were introduced, and a memorandum of law in support of the position of the Division regarding burden of proof was presented.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board, having considered the testimony and evidence adduced, now makes and enters the following Findings of Fact and Conclusions of Law:

1. Due and regular notice of the time, place and purpose of the hearing was given to all interested parties in the form and manner and within the time required by law and the rules and regulations of the Board.

2. The Board has jurisdiction over the matter covered by this petition and over all parties interested therein, and has jurisdiction to make and promulgate the Order hereinafter set forth.

3. The requirements of Title 40, Chapter 8 of the Utah Code Annotated (as amended) have been superseded by the provisions of Title 40, Chapter 10 of the Utah Code Annotated (as amended) to the extent that 40-8 allowed coal mining to proceed pursuant to an approved Notice of Intent to Mine. Specifically, §40-10-9(1), Utah Code Annotated (as amended) prohibits any person from engaging in surface coal mining operations without first obtaining a permit from the division pursuant to an approved mining and reclamation program.

4. Co-op Mining Company is engaging in surface coal mining operations as defined in §40-10-3(18).

5. Co-op Mining Company does not have a permit obtained pursuant to Utah's approved mining and reclamation program.

6. Co-op Mining Company's interim permit is issued administratively to allow Co-op Mining Company to secure a permit in a timely manner without cessation of mining operations. Such an interim permit is conditioned upon diligent efforts to secure such a permit, including the filing of a "timely and complete application for a permit under the permanent regulatory program" as required by UMC 771.13(b).

7. Such diligent efforts are not demonstrated by the record. Co-op Mining Company has failed to file a timely and complete application for a permit under the permanent regulatory program. As set forth in findings 8-14 of this Order, Co-op Mining Company has failed to meet the requirements of Chapter 40-10 or the regulations promulgated thereunder over a period of more than five years since the Act became effective.

8. Co-op Mining Company has failed to provide the site-specific ground water/aquifer information required by §40-10-10(2)(c) and UMC 783.15. Testimony given by Co-op Mining Company at the hearing indicates that Co-op Mining Company does not have such information and has made no efforts to secure such information since the Division first notified it that its application was incomplete. §40-10-10(2)(c) states "The permit shall not be approved until this information is available and is incorporated into the application."

9. Co-op Mining Company has failed to provide "an accurate map or plan, clearly showing the land to be affected as of the date of the application, the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining" as required by 40-10-10(2)(b) and UMC 783.24. Testimony given by Co-op Mining Company clearly demonstrates that maps submitted by Co-op Mining Company are incomplete and contradictory. Moreover, testimony given by Co-op Mining Company indicates that it is currently mining outside of the area sought to be permitted by its

application and that information submitted by Co-op Mining Company as to the sequence of mining is incorrect.

10. Co-op Mining Company has failed to provide maps and plans that show the location and extent of known underground mines within the proposed mine plan and adjacent areas as required by UMC 783.24. Testimony by Co-op Mining Company demonstrates that Co-op Mining Company knew that information was not part of the application for the Bear Canyon Mine. Such testimony indicates that the only other mine in the area was also owned by Co-op Mining Company and that the required information was readily available to it.

11. Co-op Mining Company has failed to provide information as to source or results of analytical data for suitable topsoil substitute material needed for reclamation as required by UMC 784.13(b)(4). Testimony of Co-op Mining Company demonstrates that some of this information was available but was not provided to the Division and that some of the information was not available until after the cut-off date for the record of this case stipulated to by the parties.

12. Co-op Mining Company has failed to provide information on aquifers and areas for the recharge of aquifers and other underground waters or an assessment of the potential subsidence damage or diminution of these renewable resource lands. Co-op Mining Company's expert in hydrology specifically testified he had not personally examined underground waters that flowed through the mine, but had relied upon descriptions of those waters by unnamed persons of unknown expertise. Co-op Mining Company attempted to rely upon unsupported opinion testimony and a contractual agreement to continue to provide water to one water user below the mine as a substitute for the information required by UMC 784.20. This attempt demonstrates a failure to attempt to satisfy the form or the substance of UMC 784.20.

13. Co-op Mining Company failed to identify the persons or organizations that collected and analyzed data given in the Mine Reclamation Plan, Chapter 6, Geology, as required by UMC 771.23(c) and (d). Testimony of Co-op Mining Company still failed to identify persons responsible for specific portions of Chapter 6, only listing all people who had participated in preparing or reviewing any portion of the Chapter in a single list. This is an area of incompleteness only recently brought to the attention of Co-op Mining Company but it is nevertheless a requirement as to which the application is incomplete.

14. Co-op Mining Company failed to file a satisfactory map identifying the strike and dip of the coal to be mined as required by UMC 783.25(d). Although Co-op Mining Company did file a map bearing strike and dip information, the Division

presented testimony that the information is wrong and is not presented in accordance with standard practices. Co-op Mining Company did not present evidence on this issue although its counsel did refer to a telephone conversation with the engineer who prepared the map.

15. The Bear Canyon Mine is the only currently operating mine on interim permit status in the State of Utah that has failed to file a complete application for a permit under the permanent regulatory program.

16. Co-op Mining Company was advised that its application was incomplete in various respects by letter dated March 27, 1984, to which was attached a Determination of Completeness dated March 30, 1984. Co-op Mining Company was also told that its application was incomplete by letter dated May 11, 1984, but that letter inadvertently failed to identify certain areas of incompleteness. Such failure does not excuse either the Division or Co-op Mining Company from the statutory and regulatory requirements that Co-op Mining Company file a complete application.

17. Each instance of Co-op Mining Company's failure to complete its application indicates an indifference on the part of Co-op Mining Company to the requirements of 40-10 of the Utah Code Annotated or the regulations promulgated thereunder and a lack of diligence and good faith in attempting to comply with those requirements. Although certain of the deficiencies, standing alone, may appear relatively minor, the pattern of conduct of Co-op Mining Company in failing to provide required information, taken as a whole, shows a lack of diligence and good faith.

18. The Division has met the burden of showing that the application is incomplete in the above described ways. The Board therefore declines to rule on the issue of whether the burden is properly upon the Division, or upon the respondent to show that the application is complete.

ORDER

IT IS THEREFORE ADJUDGED AND ORDERED THAT:

1. The interim permit to mine at Bear Canyon, issued to Co-op Mining Company, is hereby suspended and its authorization to mine is hereby withdrawn until the Division has determined that the application for a permanent permit is complete within the meaning of 40-10 of the Utah Code Annotated and regulations promulgated thereunder.

2. The suspension shall be lifted and the authorization to mine reinstated at the time the Division determines the application is complete and shall then be in effect for one

calendar year unless Co-op Mining Company can demonstrate to the Board before that time that there is good cause for extending the interim permit.

3. The Division shall review all submittals of Co-op Mining Company in this matter diligently and in a reasonable time.

4. This Order shall become effective 6:00 a.m. Mountain Daylight Time, August 1, 1984.

5. The Board retains continuing jurisdiction over this Cause.

Dated this 31st day of July, 1984.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING


Gregory P. Williams, Chairman

(2371s)